IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

MONDAY, THE 8TH OCTOBER 2007 / 16TH ASWINA 1929

Crl.Rev.Pet.No. 3611 of 2007()

CRA.192/2005 of ADDL. SESSIONS COURT (ADHOC)-II, KALPETTA
CC.379/2003 of JUDL.MAGISTRATE OF FIRST CLASS, SULTHANBATHERY

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REVN. PETITIONER: APPELLANT/ACCUSED

VIJAYAN,S/O. KRISHNAN,
MALAKAP KURUMA COLONY,
KALLUR, NOOLPUZHA AMSOM,DESAM,
WAYANAD DISTRICT.

BY ADV. SRI.M.P.ASHOK KUMAR
SRI.P.C.GOPINATH

RESPONDENTS: COMPLAINANT

STATE OF KERALA REP.BY
PUBLIC PROSECUTOR,HIGH COURT OF KERALA.

BY ADV. SRI. K.S. SIVAKUMAR, PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 08/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR , J

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CRL. R.P. NO. 3611 OF 2007

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Dated this the 8th day of October, 2007.

ORDER

The revision petitioner, who was the accused in C.C.No. 379/2003 on the file of Judicial First Class Magistrate-I, Sulthan Bathery, stands concurrently convicted for the offences punishable under Sections 452 and 326 IPC. As per the modified sentence imposed by the lower appellate court, he is sentenced to simple imprisonment for one year and to pay a fine of Rs.2500/- and on default to pay the fine, to undergo simple imprisonment for one month under Section 326 IPC and is sentenced to undergo simple imprisonment for one year and to pay a fine of Rs.2000/- and on default to pay the fine, to undergo simple imprisonment for one month under Section 452 IPC.

2. The case of the prosecution as proved though PWs 1 to 2 is as follows:

The revision petitioner/accused is the brother of the husband of the defacto complainant. He was nurturing hostility towards the defacto complainant examined as PW1 for not attending a customary ceremony held in the family on 14.04.2003. On account of his enemity towards PW1, at about 10 p.m. on that day while she was

sleeping inside her house after having supper along with her son, the accused criminally trespassed into said house and beat her on the right hand and left side of the ribs with a wooden stick causing injuries on the left side of her ribs and fracture on her right wrist. Even though her son PW2 could not identify the accused by sight, he saw a man with a white shirt leaving the place and heard the cries of her mother. He identified the accused by voice. PW1 was admitted in the Government Ayurvedic hospital, Sulthan Bathery. From there the police recorded her First Information Statement resulting in the registration of the above crime.

3. The conviction has been recorded by the courts below after a careful evaluation of the oral and documentary evidence including the wound certificate of PW1. This Court sitting in revision will be loath to interfere with the said conviction. In the absence of any infirmity in the appreciation of evidence by the courts below, the conviction is confirmed.

4. What now remains for consideration is the question of adequacy or otherwise of the sentence imposed on the revision petitioner. Having considered the relationship between the parties and other circumstances of the case, I do not think that the revision

petitioner deserves penal servitude by way of incarceration. I am of the view that a direction to undergo imprisonment till the rising of the Court and an appropriate compensation will meet the ends of justice. Accordingly, for the conviction under Section 452 IPC , the revision petitioner is sentenced to pay a fine of Rs.5000/- (Rupees five thousand only) and on default to pay the fine, to undergo simple imprisonment for one month. For the conviction under Section 326 IPC, the revision petitioner shall undergo imprisonment till the rising of the Court and shall pay a sum of Rs.10,000/-(Rupees ten thousand only) as compensation under Section 357(3) Cr.P.C to PW1. If the compensation is not paid within 45 days from today, he shall undergo simple imprisonment for three months by way of default sentence. Fine amount also shall be paid within 45 days from today.

The Crl. R.P is disposed of confirming the conviction entered but modifying the sentence as above.

sd/-**V. RAMKUMAR, JUDGE.**

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